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(7)

No. 06-1291

FILED
APR 25 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

AMGEN, INC.,
Petitioner,

v.

HOECHST MARION ROUSSEL, INC.
(now known as AVENTIS PHARMACEUTICALS, INC.)
and
TRANSKARYOTIC THERAPIES, INC.
(now known as HUMAN GENETIC THERAPIES, INC.),
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF AMICUS CURIAE FEDERAL CIRCUIT BAR ASSOCIATION IN SUPPORT OF PETITIONER

KEVIN R. CASEY
PRESIDENT,
FEDERAL CIRCUIT
BAR ASSOCIATION
1620 I Street, NW
Suite 900
Washington, D.C. 20006
(202) 558-2421

CLAIRE LAPORTE
(Counsel of Record)
MATTHEW LINDSAY
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000
Counsel for Amicus Curiae

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Federal Circuit Bar Association ("FCBA") is a national organization consisting of approximately 2,400 attorneys whose practice concerns the United States Court of Appeals for the Federal Circuit in all aspects of its jurisdiction. The FCBA offers a forum for dialogue between the bar and the judges of the Federal Circuit. One of the purposes of the FCBA is to submit briefs *amicus curiae* on matters affecting practice before the Federal Circuit and lower tribunals.[1]

Pursuant to Supreme Court Rule 37.2(a), the FCBA has conferred with the parties regarding the filing of this brief *amicus curiae*, and both parties have consented to its filing. Evidence of the written consent of the parties has been filed separately.

The FCBA respectfully submits this brief in support of the Petition for Certiorari filed by Petitioner Amgen Inc. ("Amgen"). The FCBA expresses no opinion on the merits of the underlying legal dispute. It supports Amgen's petition because its members believe that the Federal Circuit's decision in *Cybor Corp. v. FAS Technologies, Inc.*, 138 F.3d 1448 (Fed. Cir. 1998) ("*Cybor*") has negatively affected the litigation of patent rights and the patent system as a whole and should be overruled.

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[1] Pursuant to Supreme Court Rule 37.6, the FCBA states that no counsel for a party authored this brief in whole or in part. No person or entity, other than *amicus curiae*, its members, or its counsel, made any monetary contribution to the preparation of the brief.

Counsel for the FCBA in this matter represents Amgen in certain non-litigation matters unrelated to patents. The FCBA notes that its position on the issues addressed in this brief has been a matter of public record for some time. When the Federal Circuit invited briefing on this issue in connection with its *en banc* rehearing of *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), the Federal Circuit Bar Association filed a brief taking precisely the position taken in this brief.

SUMMARY OF ARGUMENT

1. The Supreme Court should grant the Petition for Writ of Certiorari in order to review the Federal Circuit's holding in *Cybor*, followed in this case, that claim construction is subject to *de novo* review. That rule has produced an unacceptably high appellate reversal rate of claim constructions, spawning uncertainty among patent litigants, postponing resolution of patent cases, and discouraging settlement.

2. The Federal Circuit's rationale for *de novo* review rests on the premise that claim construction does not involve determinations of fact. This premise is incorrect, illogical, and inconsistent with this Court's unanimous opinion in *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996) ("*Markman II*"). Notwithstanding the District Court's assertion that the enormous volume of technical evidence in which it has been immersed during ten years of fact-intensive litigation did not in any way inform its interpretation of the disputed claim terms, the appropriateness of the *Cybor* rule is squarely at issue in this case.

ARGUMENT

This Court should grant certiorari pursuant to Supreme Court Rule 10(c). In *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 457 F.3d 1293 (Fed. Cir. 2006), the Federal Circuit decided an important question of federal law in a way that conflicts with relevant decisions of this Court. In particular, the Federal Circuit applied its previous decision in *Cybor* that, because claim construction does not rest on determinations of fact, it is a matter of law reserved exclusively for the court, and therefore reviewed *de novo* on appeal.

The Federal Circuit has refused to reconsider *Cybor* despite widespread recognition among practitioners—and even a majority of the Federal Circuit's own judges—that *Cybor* is seriously flawed. In the nine years since the Federal Circuit decided *Cybor*, *de novo* review of claim construction has rendered patent litigation less predictable, spawned unnecessary legal conflict, and discouraged settlement. The FCBA further submits that the requirement of *de novo* review of claim construction rests on an erroneous legal rationale that conflicts with this Court's decision in *Markman II* and with established principles of appellate review embodied in Federal Rule of Civil Procedure 52(a).

For these reasons, the FCBA respectfully requests that this Court review the Federal Circuit's holding in *Cybor* that all aspects of claim construction are subject to *de novo* review.

The FCBA is conscious that this Court relies on the Federal Circuit for the day-to-day development and administration of patent law. *See, e.g., Warner-Jenkinson Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997). However, the FCBA respectfully asks this Court to review the *Amgen* decision because the Federal Circuit is unwilling to revisit the *Cybor* rule *en banc*, notwithstanding

widespread recognition on and off the Federal Circuit that *de novo* review of claim construction has impeded the orderly resolution of patent disputes and rests on an erroneous legal foundation. *See Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (declining to reconsider *Cybor* after requesting briefing on the issue).

I. *DE NOVO* REVIEW OF CLAIM CONSTRUCTION HAS LED TO AN UNACCEPTABLY HIGH REVERSAL RATE, FOSTERING UNPREDICTABILITY, POSTPONING FINALITY, AND DISCOURAGING SETTLEMENT.

Before the Federal Circuit decided *Cybor*, panels of that court routinely acknowledged that claim construction was firmly rooted in factual inquiry. For example, the Federal Circuit counseled in one of the leading pre-*Markman* cases that "[i]n a patent case involving complex scientific principles, it is particularly helpful to see how those skilled in the art would interpret the claim." *Moeller v. Ionetics, Inc.*, 794 F.2d 653, 657 (Fed. Cir. 1986). Although the *Moeller* court could not say that eliciting expert testimony from those skilled in the art was "a requirement in all cases," it nevertheless concluded that "the trial judge's failure to allow such testimony was an abuse of discretion." *Id. See also Palumbo v. Don-Joy Co.*, 762 F.2d 969, 976 (Fed. Cir. 1985) ("[W]hen the meaning of a term in the claim is disputed and extrinsic evidence is necessary to explain that term, then an underlying factual question arises, and construction of the claim should be left to the trier or jury under appropriate instruction."); *Bio-Rad Lab., Inc. v. Nicolet Instrument Corp.*, 739 F.2d 604, 613 (Fed. Cir. 1984) (The issue of infringement turned on "whether reasonable jurors, after reviewing all the evidence, could have

interpreted the claims to include" the allegedly infringing activity.).[2]

When the Federal Circuit ruled in *Cybor* that claim construction was subject to *de novo* review, it was with the expectation that plenary review would promote greater predictability, and therefore early settlement, by providing finality with respect to the meaning of litigated claims. Concurring in *Cybor*, Judge Plager observed, "[o]ur purpose is to improve the process of patent infringement litigation for the benefit of patentees and their competitors, and ultimately the public." *Cybor*, 138 F.3d at 1463. Whether the "new regime" would prove beneficial "in the long run" remained to be seen, Judge Plager acknowledged, "[b]ut it may be some time before we have enough experience with 'Markman hearings' and with [*de novo*] appellate review to draw any empirically sound conclusions." *Id.*

Our members have now litigated patent claims under the *Cybor* rule for nine years. As the result of this experience, the FCBA has concluded that, not only has *de novo* review of claim construction failed to "improve the process of patent litigation"; it has spawned an unacceptably high reversal rate and, with it, endemic uncertainty among

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[2] As these statements suggest, the interpretation of disputed claim terms was often assigned to the jury. *See, e.g., Tol-O-Matic, Inc. v. Proma Produkt-Und Mktg.*, 945 F.2d 1546, 1552 (Fed. Cir. 1991) ("When the question of infringement turns on the interpretation of the claim, we review whether a reasonable jury could have interpreted the claim in a way that supports its finding on the question of infringement."); *McGill, Inc. v. John Zink Co.*, 736 F.2d 666, 672 (Fed. Cir. 1984) (In the event that "the meaning of a term of art in the claims is disputed and extrinsic evidence is needed to explain the meaning, construction of the claims could be left to a jury."). *See also* William H. Burgess, Comment: *Simplicity at the Cost of Clarity: Appellate Review of Claim Construction and the Failed Promise of Cybor*, 153 U. Pa. L. Rev. 763, 769-71 (2004) (describing the "mixed standard of review" employed by the Federal Circuit in the pre-Markman era). The Federal Circuit Bar Association does not suggest that claim construction should be a matter for the jury.

litigants and practitioners.[3] This conclusion is well supported by empirical data. Scholarly analyses of the Federal Circuit's post-*Markman II* review of claim constructions place the reversal rate between 35% and 44%.[4] Further, although the reversal rate did begin to decline in the wake of *Markman II*, it rose in each of the five years following the Federal Circuit's decision in *Cybor*.[5]

As a result, *Cybor* has produced the opposite of its desired effect. Far from encouraging authoritative early construction of patent claims, *de novo* review instead defers

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[3] Dissenting in the Federal Circuit's denial of rehearing *en banc*, Chief Judge Michel identified four practical problems with the *Markman-Cybor* regime:

> (1) a steadily high reversal rate; (2) a lack of predictability about appellate outcomes, which may confound trial judges and discourage settlements; (3) loss of the comparative advantage often enjoyed by the district judges who heard or read all of the evidence and may have spent more time on the claim construction than we ever could on appeal; and (4) inundation of our court with the minutia of construing numerous disputed claim terms (in multiple claims and patents) in nearly every patent case.

Amgen, Inc. v. Hoechst Marion Roussel, Inc., 469 F.3d 1039, 1040 (Fed. Cir. 2006) (Michel, C.J., dissenting).

[4] *See* Kimberly A. Moore, *Markman Eight Years Later: Is Claim Construction More Predictable?*, 9 Lewis & Clark L. Rev. 231, 233 (2005) (35%); Christian A. Chu, *Empirical Analysis of the Federal Circuit's Claim Construction Trends*, 16 Berkeley Tech. L.J. 1075, 1104 (2001) (44%); Gretchen Ann Bender, *Uncertainty and Unpredictability in Patent Litigation: The Time is Ripe for a Consistent Claim Construction Methodology*, 8 J. Intell. Prop. L. 175, 207 (2001) (40%). As then-Professor Moore noted, the two latter studies do not account for the Federal Circuit's Rule 36 summary affirmances. Moore, *supra*, at 234. *See also Cybor*, 138 F.3d at 1476 (Rader, J., dissenting) (noting that the Federal Circuit reversed in whole or in part 53% of appealed claim constructions, according to the Federal Circuit's official 1997 statistics, and citing studies showing a 40% reversal rate for claim construction since *Markman I*).

[5] *Id.* at 246.

until the appellate decision the point at which litigants and practitioners can reliably assess their likelihood of prevailing. At that point, the opportunity for early resolution is long past. As Judge Rader explains, the "Markman I regime means that the trial court's early claim interpretation provides no early certainty at all, but only opens the bidding. The meaning of a claim is not certain until nearly the last step in the process—decision by the Court of Appeals for the Federal Circuit." *Cybor*, 138 F.3d at 1476 (Rader, J., dissenting). One district judge candidly explained that "lawyers know litigation will be a long haul because what the district court says ultimately will not determine the issue." Hon. Kathleen M. O'Malley, Hon. Patti Saris, and Hon. Ronald H. White, *The Past, Present and Future of the Federal Circuit: A Panel Discussion: Claim Construction from the Perspective of the District Judge*, 54 Case W. Res. L. Rev. 671, 682 (2004) (statement of Judge Saris).[6] Another district judge cited a fear among practitioners that the Federal Circuit's high reversal rate induced trial judges to grant summary judgment even when there are disputed facts, reasoning, "I do not want to try this case twice, [so I'll] just send it up. Let the Federal Circuit tell me whether I got the claim construction wrong by making the infringement decision on the summary judgment." *Id.* at 687 (statement of Judge O'Malley).[7]

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[6] Judge Saris went on to note a recent increase in preliminary injunction motions in patent cases, "so that parties can appeal . . . and get a quick read on the claim construction. . . . Patent litigators want to get that claim construction up to the CAFC." *Id.* Judge Rader has similarly observed that as a result of the high reversal rate, "the trial court becomes a ticket to the real center stage, the Court of Appeals for the Federal Circuit." *Cybor*, 138 F.3d at 1476 (Rader, J., dissenting).

[7] This dynamic unnecessarily taxes judicial resources and contributes to the spiraling cost of patent litigation. The American Intellectual Property Law Association reports that the average cost of litigating a patent infringement suit when more than $25 million is at stake surged from less than $3 million in 2001 to $4.5 million in 2005—an increase of

This case presents an important opportunity to stem the rising reversal rate and promote greater predictability in, and earlier resolution of, patent cases. On account of these important pragmatic considerations alone, this Court should grant Amgen's Petition for Certiorari.

II. THE FEDERAL CIRCUIT'S RATIONALE FOR *DE NOVO* REVIEW OF CLAIM CONSTRUCTION IS LEGALLY INCORRECT AND INCONSISTENT WITH THIS COURT'S UNANIMOUS OPINION IN *MARKMAN II*

A. The Federal Circuit's Rationale for *De Novo* Review Rests on the Faulty Premise that Claim Construction Does not Involve Determinations of Fact

When a trial court construes a disputed claim term, "the focus is on the objective test of what one of ordinary skill in the art at the time of the invention would have understood the term to mean." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 986 (Fed. Cir. 1995) ("*Markman I*"). As this Court and several judges on the Federal Circuit have observed, this is an inherently factual inquiry. During Markman hearings, "which are often longer than jury trials," explained Judge Mayer, parties vigorously dispute

> who qualifies as one of ordinary skill in the art; the meaning of patent terms to that person; the state of the art at the time of the invention; contradictory dictionary definitions and which would be consulted by the skilled artisan; the scope of specialized terms; the problem a patent was solving; what is related or pertinent art; whether a construction was disallowed during

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more than 50% in just four years. American Intellectual Property Law Association, *Report of the Economic Survey 2005* 23 (2005).

> prosecution; how one of skill in the art would understand statements during prosecution; and on and on.

Phillips, 415 F.3d at 1333 (Mayer, J., dissenting from the denial of rehearing *en banc*).

To patent practitioners, it is uncontroversial to assert that claim construction often requires the trial court to resolve underlying issues of fact. However, the *Cybor* rule perpetuates a fiction: that trial courts rely on extrinsic evidence only to understand the technology, but not to determine the meaning of claims. As the Federal Circuit declared in *Markman I*, while extrinsic evidence

> may be necessary to inform the court about the language in which the patent is written[,] . . . [it] is not for the purpose of clarifying ambiguity in claim terminology. It is not ambiguity in the document that creates the need for extrinsic evidence but rather the unfamiliarity of the court with the terminology of the art to which the patent is addressed.[8]

Markman, 52 F.3d at 986. *See also Cybor*, 138 F.3d at 1454.

This rationale defies experience and common sense. Trial judges routinely hear many hours of expert testimony and review extensive documentary evidence in the course of determining how a person of ordinary skill in the art would have interpreted a claim term at the time of the invention. In the present case, as Chief Judge Michel explained, the District Court's claim construction was "well grounded in . . . evidence" gleaned from 32 days of trial, "extensive findings of fact and conclusions of law," and tutorials from an M.I.T. Professor whom the District Court appointed as a technical advisor. *Amgen*, 457 F.3d at 1318 (Michel, C.J.,

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[8] The Federal Circuit's exceptionally high reversal rate for claim construction, *see supra*, belies its assertion in *Markman I*, *Cybor*, and *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996), that claim terms themselves typically are not ambiguous and thus can be interpreted on the basis of the intrinsic record alone.

dissenting).[9] Rarefied theoretical distinctions between understanding the technology and clarifying ambiguity in claim terminology notwithstanding, determining the meaning of a disputed term to a person of ordinary skill in the art at the time of invention is an inherently factual enterprise.[10]

As recently as 2005, the Federal Circuit refused to revisit the *Cybor* rule *en banc*, even after requesting briefing from the parties on whether it is "appropriate . . . to accord any deference to any aspect of trial court claim construction rulings." *Phillips*, 415 F.3d at 1328. Because the Federal Circuit has inexplicably refused to revisit *Cybor* despite the inclination of many of its judges to do so,[11] and because the

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[9] *See also Phillips*, 415 F.3d at 1334 (Mayer, J., dissenting) ("In order to reconcile the parties' inconsistent submissions and arrive at a sound interpretation, the district court is required to sift through and weigh volumes of evidence.").

[10] The Federal Circuit's admonition that, in construing patent claims, trial courts typically can and should eschew "extrinsic" evidence in favor of the "intrinsic" record, is premised on an implausibly categorical distinction between "extrinsic" and "intrinsic" evidence. Specifically, the Federal Circuit cordons off evidence that is included within the patent's file history—the claim, specification, and prosecution history—and labels it "intrinsic," on the theory that such evidence constitutes the "public record" of the patented invention. *Vitronics*, 90 F.3d at 1584. But why should a court's reliance on prior art that is part of the file history to define the scope of a claim qualify as pure legal construction, while its consideration of other prior art constitutes fact-finding? Yet it is this bright-line distinction that the Federal Circuit invokes to support its position that claim construction is devoid of fact-finding.

[11] In this and other cases, at least five of the twelve sitting Federal Circuit judges have directly criticized *de novo* review of claim constructions. *See, e.g., Amgen*, 469 F.3d at 1040 (dissent of Judge Michel, joined by Judge Rader); *id.* at 1041 (dissent of Judge Newman); *id.* at 1044 (dissent of Judge Rader); *id.* at 1045 (dissent of Judge Moore); *Cybor*, 138 F.3d at 1463-66 (concurrence of Judge Mayer, joined by Judge Newman); *id.* at 1473-73 (dissent of Judge Rader, joined by Judge Newman); *id.* at 1478-81 (additional views of Judge Newman, joined by Judge Mayer); *Phillips*, 415 F.3d at 1330-34 (dissent of Judge Mayer, joined by Judge Newman). At least four others have implied dissatisfaction with *de novo* review, *Amgen*, 469 F.3d at 1043

Cybor rule undermines the orderly and timely resolution of patent cases, this Court should grant the Petition for Certiorari.

B. *De Novo* Review of Claim Construction is Inconsistent with *Markman II*

In *Markman II*, this Court concluded that, by virtue of judges' "training and discipline," they, rather than juries, are best positioned to undertake the kind of highly technical and time-consuming analysis that often is required to construe a patent claim. The decision hinged not on "history" or "precedent," but on "functional considerations" of the respective institutional competencies of judges and juries to "define terms of art." *Markman II*, 517 U.S. at 388. This Court explained:

> The decisionmaker vested with the task of construing the patent is in the better position to ascertain whether an *expert's proposed definition* fully comports with the specification and claims and so will preserve the patent's internal coherence. We accordingly think there is sufficient reason to treat construction of terms of art like many other responsibilities we cede to a judge in the normal course of trial, *notwithstanding its evidentiary underpinnings*.

Markman II, 517 U.S. at 390 (emphasis added).

Three points bear special emphasis. First, this passage explicitly recognizes the "evidentiary underpinnings" of claim construction. Second, this Court presumes that, in the course of construing a claim, judges will weigh the "proposed definition[s]" of experts. Third, the passage

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(concurrence of Judge Laurie), or indicated a willingness to reconsider certain aspects of *Cybor*. *See, e.g.*, *id.* at 1045 (concurrence of Judge Gajarsa, joined by Judges Linn and Dyk); *Phillips*, 415 F.3d at 1330 (dissent of Judge Lourie).

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highlights the practical, rather than legal, reasons to allocate claim construction to the court. Claim construction falls to judges not because it is a purely legal activity, but because it is best performed by a judge.

Notwithstanding the pragmatism of *Markman II*, the Federal Circuit has taken this Court's pronouncement that claim construction is a matter for the court, stripped it of its context, and declared that claim construction is a pure matter of law that must be reviewed *de novo*. In so doing, the Federal Circuit has overlooked this Court's repeated acknowledgement in *Markman II* that claim construction is fact-dependent.[12] Judge Newman noted the inconsistency between the Federal Circuit's approach and this Court's opinion in her dissent in *Cybor*:

> In *Markman [I]* the *en banc* court took the position that in patent cases, unlike any other area of law, a disputed question of the meaning, scope, and usage of terms of technologic art is not a question of fact, or even of law based on underlying fact, but is pure law. However, the Supreme Court has relieved us of adherence to this fiction, by its recognition of the factual component of claim interpretation. Further, the Court's affirmation that claim interpretation "is exclusively within the province of the court," [citation omitted], did not shut out the trial judge along with the jury.

Cybor, 138 F.3d at 1480 (Newman, J., offering "additional views"). This Court should therefore grant certiorari in order

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[12] As the Petitioner and several Federal Circuit judges have observed, this Court noted throughout *Markman II* that claim construction was in fact a "mongrel practice," *Markman II*, 517 U.S. at 390, that "falls somewhere in between a pristine legal standard and a simple historical fact." *Id.* at 388.

to assess the compatibility of the *Cybor* rule with its opinion in *Markman II*.

C. Notwithstanding the District Court's Purported "Disavowal" of Reliance on Factual Determinations, the Appropriateness of the *Cybor* Rule is Ripe for Review

Respondents contend that this Court should deny certiorari on the ground that, because the District Court's claim construction did not "rest on any 'findings of fact,'" the appropriateness of the *de novo* standard of review applied by the Federal Circuit is not at issue. Resp. at 1. They refer, in particular, to Judge Young's repeated "disavowal" that he relied on extrinsic evidence in construing the claim. Respondents misunderstand the District Court's opinion.

The Federal Circuit instructs trial judges that they may resort to extrinsic evidence, including prior art and expert testimony, to understand the technology embodied in the patent, but not to interpret the scope of a patent claim. If that distinction strikes this Court as conceptually difficult, consider it from the perspective of a judge who has benefited from the tutorials of a technical advisor, heard testimony from multiple experts, reviewed reams of documentary evidence, and presided over hundreds of trial hours. "What happens when that learning influences a trial judge's interpretation of the claim terms?" asks Judge Rader. "Are trial judges supposed to disguise the real reasons for their interpretation?" *Cybor*, 138 F.3d at 1474 (Rader, J., dissenting).

While Judge Young indicated in his opinion that the extensive technical education he received during the course of the litigation did not inform his interpretation of the disputed claim term, his opinion also suggests that such professions may represent little more than a compulsory nod to the *Cybor* rule. Judge Young described an "apparent

conundrum" created by the Federal Circuit's extrinsic evidence rule:

> [I]t discourages resort to extrinsic evidence while at the same time urging courts to begin claim construction by considering the plain and customary meaning of a term as understood by one skilled in the art. How does a Court decipher the plain and customary meaning of a term as understood by one skilled in the art without resorting to extrinsic evidence about how one skilled in the art would construe the term?

Amgen, Inc. v. Hoechst Marion Roussel, Inc., 339 F. Supp. 2d 202, 226 n.23 (D. Mass. 2004).

Judge Young appeared skeptical about the plausibility of simply "drawing a line between cognitive and investigative tasks," *see id.*, but ultimately concluded: "The Federal Circuit has decided, however, that . . . [t]he task of claim construction falls on the 'cognitive' side of the divide between expanding and applying cognitive capacities, on the one hand, and investigating facts, on the other." *Id.* Therefore, he characterized his construction of the disputed term as the product of a purely legal analysis of intrinsic evidence. As Judge Rader remarked of Judge Young's opinion, "[d]istrict court judges have learned to disclaim any reliance on expert testimony." *Amgen*, 469 F.3d at 1044 (Rader, J., dissenting).[13]

The Federal Circuit defines what district courts do when they construe patent claims as a purely legal exercise that is unburdened by extrinsic evidence. Because district judges, including Judge Young, are mindful of this jurisprudence and draft their claim construction opinions accordingly, it is unreasonable to expect any claim

[13] We might also ask, as Judge Rader did in *Cybor*, "[h]ow will this perverse incentive to 'hide the ball' improve appellate review?" *Cybor*, 138 F.3d at 1474 (Rader, J., dissenting).

construction opinion to pose an explicit challenge to *Cybor*, regardless of its actual basis. For this reason, the *Cybor* regime will continue without review unless this Court looks past the District Court's characterization of its approach to consider instead how the Judge Young actually determined what the disputed claim term meant to a person skilled in the art at the time of the invention. In short, an objective reading of the District Court's opinion indicates that the *Cybor* rule is ripe for review.

CONCLUSION

For the foregoing reasons, amicus curiae Federal Circuit Bar Association respectfully requests that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

KEVIN R. CASEY
PRESIDENT,
FEDERAL CIRCUIT
BAR ASSOCIATION
1620 I Street, NW
Suite 900
Washington, D.C. 20006
(202) 558-2421

CLAIRE LAPORTE
(Counsel of Record)
MATTHEW LINDSAY
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000
Counsel for Amicus Curiae
Federal Circuit Bar Association

Dated: April 25, 2007